

- l) Using the Medicaid member's or another person's information that is confidential, privileged, or which cannot be disclosed to or obtained by the user without violating a State or Federal confidentiality law, including:
 - 1) Medical records information.
 - 2) Information that identifies the member as a recipient of any government-sponsored or mandated health coverage program.
- m) Using any device or artifice in advertising a MCO or soliciting Medicaid enrollees that misrepresents the solicitor's profession, status, affiliation, or mission.
- iii. If MLTC determines that the MCO or its subcontractor(s) has marketed to and the member has enrolled in the MCO, MLTC may impose the following sanctions:
 - a) The MCO will be required to send a letter to each member, notifying the member of the violation and of his/her right to select another MCO. The members disenrollment will be on the earliest effective date allowed.
 - b) Any payments made to the MCO on behalf of the member(s) will be recouped if the member disenrolls.
 - c) The MCO will be assessed an additional \$5,000 monetary sanction per member.
- iv. If MLTC determines that the MCO has violated any of the marketing and/or outreach requirements outlined in the contract, the MCO may be subject to damages up to \$10,000 per violation. The amount of damages is at the discretion of MLTC.
- h. Other Liquidated Damages may be assessed as otherwise permitted in the RFP.
- i. MLTC will provide written notice and factual basis for the assessment of liquidated damages to the MCO. Within ten (10) business days of receipt of the written notice, the MCO may appeal the assessment of liquidated damages in writing to the Deputy Director of the Delivery Systems Section of MLTC. A written decision will be issued within ten (10) business days. Within five (5) business days of receipt of the written decision, the MCO may request reconsideration of the decision in writing to the Director of MLTC. The Director shall issue a written opinion within 30 calendar days. No further appeals shall be allowed.

3. Failure to Provide Benefits and Services

If MLTC determines that the MCO has failed to provide one or more benefits or services, MLTC will direct the MCO to provide the benefit(s) or service(s). If the MCO continues to refuse to provide the benefit(s) or service(s), MLTC will authorize the member(s) to obtain the services from another source and will notify the MCO in writing that the MCO will be charged the actual cost of the services. In this event, funds equivalent to the expense(s) will be deducted from the next monthly capitation payment or a future payment as determined by MLTC. With the deductions, when made, MLTC will provide a list of the affected member(s) concerning which payments to the MCO have been deducted, the nature of the benefit(s) or service(s) denied, and payments MLTC made or will make to provide the medically necessary covered benefit(s) or service(s).

W. INTERMEDIATE SANCTIONS

1. Acts or Failures to Act Subject to Intermediate Sanctions

The following violations are grounds for intermediate sanctions that may be imposed in the sole discretion of MLTC when the MCO act or fails to act:

- a. The MCO fails substantially to provide medically necessary services that the MCO is required to provide, under law or under its contract with MLTC, to a member covered under the contract.

- b. The MCO imposes on members premiums or charges that are in excess of allowable charges permitted under the Medicaid program.
- c. The MCO discriminates against members on the basis of their health status or need for health care services.
- d. The MCO misrepresents or falsifies information that it furnishes to CMS or to the State.
- e. The MCO misrepresents or falsifies information that it furnishes to a member, enrollee, or health care provider.
- f. The MCO fails to comply with the requirements for physician incentive plans, if applicable.
- g. The MCO distributes, directly or indirectly through any agent, marketing materials that were not approved in advance by MLTC or that contain false or materially misleading information.
- h. The MCO violates any of the other applicable requirements of sections 1903(m) or 1932 of the Social Security Act and any implementing regulations.
- i. Any other action or inaction that the State deems a violation and that merits a sanction consistent with this section.

2. Other Misconduct Subject to Intermediate Sanctions

MLTC in its sole discretion also may impose sanctions against a MCO if it finds any of the following non-exclusive actions or occurrences:

- a. The MCO failed to correct deficiencies in its delivery of service after having received written notice of these deficiencies from MLTC.
- b. The MCO was excluded from participation in Medicare because of fraudulent or abusive practices, pursuant to Public Law 95-142.
- c. The MCO or any of its owners, officers, or directors was convicted of a criminal offense relating to performance of the contract with MLTC, of fraudulent billing practices, or of any negligent practice resulting in death or injury to a MCO member.
- d. The MCO presented, or caused to be presented, any false or fraudulent claim for services, or submitted or caused to be submitted false information to the State or CMS.
- e. The MCO engaged in a practice of charging and accepting payment (in whole or part) from members for services for which a PMPM payment was made to the MCO by MLTC.
- f. The MCO rebated or accepted a fee or portion of a fee or charge for a member referral.
- g. The MCO failed to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.
- h. The MCO failed to keep, or make available for inspection, audit, or copying, the records regarding payments claimed for providing services.
- i. The MCO failed to furnish any information requested by MLTC regarding payments for providing goods or services.
- j. The MCO furnished goods or services to a member, which at the sole discretion of MLTC, and based on competent medical judgment and evaluation, are determined to be insufficient for his/her needs, harmful to the member, or of grossly inferior quality.

3. Sanction Types

- a. MLTC may impose the following intermediate sanctions at its sole discretion:
 - i. Civil monetary penalties as specified in Attachment 18 – Liquidated Damages.

- ii. Appointment of temporary management as described in this section.
 - iii. Granting members the right to terminate enrollment without cause and notifying the affected members of their right to disenroll.
 - iv. Suspension of all new enrollments into the MCO, including auto-assignments, as of the effective date of the sanction.
 - v. Suspension of payment for members enrolled after the effective date of the sanction, unless and until CMS or MLTC is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.
 - vi. Any other remedy, right, or sanction allowed under the contract or applicable law.
- b. Payments under the contract will be denied for new members when, and for as long as, payment for those members is denied by CMS in accordance with the requirements of 42 CFR 438.730.

4. Notice of Sanction to MCO and CMS

- a. Prior to imposing any intermediate sanction, the State will give the MCO timely written notice that explains the following:
- i. The basis and nature of the sanction.
 - ii. The MCO's right to an administrative hearing.
- b. MLTC will give the CMS Regional Office written notice whenever it imposes or lifts an intermediate sanction for one of the violations listed in 42 CFR 438.700, specifying the affected MCO, the kind of sanction, and the reason for MLTC's decision to lift a sanction (if applicable). Notice will be given no later than 30 calendar days after MLTC imposes or lifts the sanction.

5. Payment of Liquidated Damages and Sanctions

- a. The purpose of establishing and imposing liquidated damages is to provide a means for MLTC to obtain the services and level of performance required for successful operation of the contract. MLTC's failure to assess liquidated damages in one or more of the particular instances described herein will in no event waive the right, power, or authority of MLTC to assess additional liquidated damages or actual damages at that time or in the future.
- b. The decision to impose liquidated damages (including intermediate sanctions) will include consideration of some or all of the following factors:
- i. The duration of the violation.
 - ii. Whether the violation (or one that is substantially similar) has previously occurred.
 - ii. The MCO's compliance history.
 - iii. The severity of the violation and whether it imposes an immediate threat to the health or safety of the MCO's members.
 - iv. The good faith exercised by the MCO in attempting to achieve or remain in compliance.
- c. The violations described in Attachment 18 – Liquidated Damages are examples of the grounds, but not an exclusive list of grounds, on which MLTC may impose liquidated damages.
- d. Any liquidated damages assessed by MLTC that cannot be collected through withholding from future capitation payments will be due and payable to MLTC within 30 calendar days after the MCO's receipt of the notice of liquidated damages. However, in the event an appeal by the MCO results in a decision in favor of the MCO, any funds withheld by MLTC will be returned to the MCO as consistent with the appeal decision.

6. Special Rules for Temporary Management

- a. MLTC may install temporary management if it finds that there is continued egregious behavior by the MCO, including, but not limited to, behavior that is described in 42 CFR 438.706, or that is contrary to any requirements of Sections 1903(m) and 1932 of the Social Security Act.
- b. MLTC will impose temporary management if it finds that a MCO has repeatedly failed to meet substantive requirements in Sections 1903(m) or 1932 of the Social Security Act. In this circumstance, MLTC must also notify members of the MCO of their right to select another MCO, and allow them to do so. The State may not delay imposition of temporary management to provide a hearing regarding the sanction. In addition, MLTC will not terminate temporary management until it determines that the sanctioned behavior will not recur.

7. Payment of Outstanding Monies or Collections from MCO

The MCO will be paid for any outstanding monies due less any assessed liquidated damages or sanctions. If liquidated damages exceed monies due, collection will be made from the MCO performance bond or any insurance policy or policies required under this contract, as appropriate. The rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

8. Provider Sanctions

Nothing contained in this RFP shall prohibit MLTC, pursuant to applicable law, from imposing sanctions, including civil liquidated damages, license revocation, and Medicaid termination, on a health care provider for its violations of applicable law.

X. TRANSITION AND IMPLEMENTATION

1. Preliminary Implementation Plan

- a. The MCO is responsible for submitting a preliminary implementation plan with its proposal. This plan must describe the MCO's plan to comply with all the major areas of the contract including:
 - i. Member services.
 - ii. Network development and management.
 - iii. Quality management, including credentialing.
 - iv. Care management.
 - v. Utilization management.
 - vi. Transition and care coordination.
 - vii. Information systems management.
 - viii. Claims management.
 - ix. Grievances and appeals.
- b. The preliminary implementation plan must also address staffing, facilities, and other operational issues as identified in this RFP and the MCO's proposal. The plan must include tasks, deliverables, and milestones necessary to implement the program.

2. Transition Period

- a. The transition period for the contract begins on contract award and ends 90 calendar days after the contract start date. During the transition period the MCO must implement the requirements of the contract and this RFP and collaborate with MLTC to facilitate a seamless transition between MCOs, providers, and programs in order to prevent an interruption of services and to ensure continuity of care for members.